

<b>1300 Franklin Ave. Members, LLC v Board of Trustees of Inc. Vil. of Garden City</b>
2008 NY Slip Op 30504(U)
February 11, 2008
Supreme Court, Nassau County
Docket Number: 4687-07/
Judge: Joseph P. Spinola
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**SHORT FORM ORDER**  
SUPREME COURT, STATE OF NEW YORK  
COUNTY OF NASSAU

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**1300 FRANKLIN AVENUE MEMBERS, LLC,**  
Petitioner

**Trial/IAS Part 19**  
**Index No. 07-4687**  
**Sequence No. 01, 02**  
**Submit Date 9/21/07**

*against*

**THE BOARD OF TRUSTEES OF  
THE INCORPORATED VILLAGE  
OF GARDEN CITY, AND THE  
INCORPORATED VILLAGE  
OF GARDEN CITY,**

Respondents

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**LT PROPCO, LLC,**

Petitioner

**Index No. 07-4708**  
**Sequence No. 01, 02**  
**Submit Date 9/21/07**  
*(Related matter)*

*against*

**THE BOARD OF TRUSTEES OF THE  
INCORPORATED VILLAGE OF  
GARDEN CITY, AND THE INCORPORATED  
VILLAGE OF GARDEN CITY,**

Respondents

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**The following papers read on this motion:**

- Notice of Motion/Order to Show Cause..... X**
- Cross-Motions..... X**
- Answering Affidavits..... X**
- Replying Affidavits..... X**

**PRESENT: HON. JOSEPH P. SPINOLA**

In two related proceedings pursuant to CPLR Article 78, and CPLR 3001, the petitioners LT Propco, LLC and 1300 Franklin Avenue Members, LLC move for

judgment setting aside a determination rendered by the respondent Board of Trustees of the Incorporated Village of Garden City, dated March 7, 2007, which imposed special benefit tax assessments of: (1) \$457, 564.55 upon petitioner LT Propco, LLC; and (2) \$458,854.54 upon petitioner 1300 Franklin Avenue Members, LLC.

Motions pursuant to CPLR 3211 and 7804[f] by the Respondents Board of Trustees of the Incorporated Village of Garden City and the Incorporated Village of Garden City, for an order dismissing the petitions.

In March of 2007, the respondent Board of Trustees of the Incorporated Village of Garden City [the “Board”], adopted a resolution by which it levied and apportioned a special assessment as against various commercial properties allegedly benefitted by improvements expanding Garden City municipal parking lot “10” – which is located adjacent to Franklin Avenue and between Tenth and Eleventh Streets in the Village of Garden City (Leistman [June 29] Aff., ¶¶ 25-26; Exhs., “E” “I”, “M” “N” *see*, Real Property Tax Law § 102[15]; Village Law § 22-2200).

The improvements to Lot 10 were made in furtherance of, *inter alia*, an overall plan to revitalize the Village’s business districts through, among other things, expansion of municipal parking, since public parking in the Village – once “one of Garden City’s strongest assets” – had materially deteriorated over the years and had resulted in substantial space shortfalls in several Village lots (*e.g.*, Leistman Aff., in Opp., Exh., “A” *Strategy to Revitalize Garden City’s Business Districts*, “Executive” Summary of Report, 1, 5 [1997]; “Traffic and Parking Research and Recommendations,” Report [Part III], at 4-5, 6, 8, 15-16).

In accord with the assessment methodology adopted by the Village, all properties listed on an assessment map filed in connection with the improvements were deemed to be benefitted and were assessed at a uniform rate of \$2.1788782 per square foot, based on the greater of the: (1) actual or; (2) maximum permissible floor area of the property in question (Leistman [June 29] Aff., ¶¶ 28-30; Exh., “I” [Resolution, 11-2007]).

The petitioners LT Propco, LLC [“Propco”] and 1300 Franklin Avenue Members, LLC [“Franklin Avenue Members”], own commercial properties located respectively, at 1200 and 1300 Franklin Avenue, in the Village’s “C-B” commercial zone (Code § 200-27). The petitioners were assessed apportioned amounts of: (1) \$458, 854.45 (Franklin Avenue); and (2) \$457, 564.55 (Propco), which collectively represent, 36% of the total assessment imposed (\$2,539,866.75). Notably, the foregoing amounts constitute, by far, the two largest assessments imposed (Leistman [June 29] Aff., ¶ 30; Exhs., “N”, at 3-4).

The petitioners’ parcels are subject to a Code-mandated, maximum “floor to area ratio” [“FAR”] restriction of 2.10, *i.e.*, the floor area in square feet divided by the area in square feet of the plot on which the building is situated (Code § 200-3). According to Franklin and Propco, however, their buildings actually contain (or will contain) respectively, only 135,871 and 159,650 square feet of permissibly usable space –

corresponding to FAR values of 1.37 and 1.59 (Leistman [June 29] Aff., ¶¶ 12-13).

The various maps filed in connection with the assessment indicate that 1300 Franklin Avenue property is approximately 1200 feet from the improved lot, while the Propco property is situated further south and therefore in closer proximity to the lot 10 – although neither property is contiguous to, nor adjoins the improved parking lot (Leistman Aff., Exh., “L” “M”).

At a public hearing conducted prior to the formal adoption of the proposed apportionments, representatives of petitioner Franklin Avenue Members, including its principal Alfred Weissman, appeared before the Village Board and objected to the assessment by asserting, among other things, that: (1) the petitioners’ properties were remotely situated from the improved lot and derived no direct benefits therefrom; (2) that less intensively assessed properties located in closer proximity to Lot 10 were the primary or exclusive beneficiaries of the improvements; and (3) that the Board’s reliance upon the maximum permissible floor area – as derived from Code-regulated, “Floor to Area Ratio” formulas [“FAR”], yielded an inequitable and unfair apportionment as applied to them (Leistman [June 29] Aff., Exhs., “K” March 1, 2007 Transcript at 2-4).

Moreover, according to Weissman, the alleged inequity of the assessment was further exacerbated by the fact that Weissman had voluntarily agreed – in conjunction with the original site plan for his property – to expend some \$400,00.00 to improve municipal parking lot 11, which is located behind his property (Leistman, ¶ 33, 57; Exh., “K” at 3-4, 7, 9-10)

In response, Trustee Rothschild observed, *inter alia*, that the parking issue at the subject location had been the subject of extensive study; that, in particular, the shortage of parking in the “middle of this commercial district” (where Lot 10 is situated) had a “domino” or spill over effect in terms of its negative impact on the entire area; and that by virtue of the improvements made, all businesses “down from Fourteenth Street to Stewart Avenue” would therefore derive a benefit (Leistman Exh., “K” at 11-13, 15-17).

Notably, § 200-62[A] of the Village Code provides, *inter alia*, that: (1) “[n]o use shall be maintained in the village unless off-street parking spaces as specified in § 200-62.1 of this Article are provided \* \* \*;” and (2) “[m]unicipal parking within 300 feet of the building may be used to satisfy all or part of the parking requirements, subject to the approval of the Board of Trustees in connection with site plan and/or parking plan approval” (Village Code § 200-62[C][1]).

The petitioners contend that although their properties are directly serviced by municipal lots located in relative proximity to their parcels (Leistman [June 29] Aff., ¶ 15), lot 10 primarily services several other commercial establishments which are much closer to the improvement field (*e.g.*, parcels A-10 to A14). The petitioners further assert that, as measured and calculated under the Village Code, the pre-improvement parking available to these parcels, was grossly inadequate (Village Code § 200-62.1)(Leistman

[\* 4 ]  
[June 29] Aff., ¶¶ 19-22, 41, 73-76; Leistman Opp Aff., ¶¶ 31; 40-42, 45).

On the other hand, the parking available in proximity to the petitioners' properties complied or substantially complied with applicable Code requirements based on the petitioners' currently prevailing FAR values (1.37 and 1.59) – but would not permit floor area development to a level approaching the maximum FAR value of 2.1 employed in conjunction with the assessment (*see*, Building Zone Ordinance [“BZO”] §§ 200-59-200-62.1 (Leistman [June 29] Aff., ¶¶ 16, 35, 41; Exh., “M”).

After the hearing, the Village Board adopted a resolution (by a 5-2 vote), apportioning the outstanding project costs among the various properties listed in the assessment map, including both the 1300 Franklin Avenue and Propco properties which were assessed, as noted above, in the amounts of: (1) \$458, 854.45; and (2) \$457, 564.55 (Leistman [June 29] Aff., Exh “N”).

In connection with the petitioners' properties, the respondents calculated the assessment based upon maximum potential building areas of 210,592 (1300 Franklin) and 210,000 square feet (Propco) and a FAR value of 2.1 – although according to the petitioners: (1) the buildings contain 135,871 and 159,650 square feet of usable space (FAR values of 1.37 and 1.59); and (2) could achieve additional building area only through the issuance of, *inter alia*, variances with respect to applicable parking space requirements (Leistman Aff. [June 29] Aff., ¶¶ 4[a]-[c], 12-16).

Thereafter, by verified petitions dated March, 2007, Franklin Avenue Members and Propco commenced the within proceedings pursuant CPLR article 78 for, *inter alia*, declaratory relief and judgment annulling and setting aside the assessments and/or apportionments imposed by the March, 2007 resolution.

The Village respondents move pursuant to CPLR 7804[f] for an order dismissing the verified petitions. The petitions are granted to the extent indicated below.

As defined in Real Property Tax Law § 102[15]) a special assessment “a charge imposed upon benefitted real property in proportion to the benefit received by such property \* \* \*.”

Village Law § 22-2200[2] further provides in part that, “[w]hen the cost of any such local improvements has been determined the board shall apportion and assess the part of the expense to be raised by local assessments upon the lands in such assessment district, according to frontage, area, or otherwise, as the board may determine during the proceedings to be just and equitable \* \* \*.”

It is settled that special assessments are presumed to be valid, regular, and legal (*Donohue v. Dutchess County Legislature*, 277 AD2d 377, 378; *Garden Homes Woodlands Co. v. Town of Beekman*, 275 AD2d 370, 371), and “[i]f any state of facts is known, or may reasonably be assumed, which justifies the legislative enactment, the

[\* 5 ]

court's power of inquiry ends" (*Scarsdale Chateaux RTN v. Steyer*, 53 AD2d 672, 673, *affd*, 41 NY2d 1043, 1044 [1977]; *Baglivi v. Town of Highlands*, 147 AD2d 432, 433).

Notably, the burden of disproving that the value of the property has been enhanced is a heavy one which must be borne by the petitioner (*Scarsdale Chateaux RTN v. Steyer*, *supra*, 41 NY2d 1043, 1044; *Baglivi v. Town of Highlands*, *supra* see also, *Palmer v. Town Of Kirkwood*, 288 AD2d 540, 541).

On the other hand, the Court of Appeals has emphasized that "where the conditions within the area of assessment are such that the improvement results in unequal benefits to different parcels some method must be adopted which will levy the assessment in proportion to the benefits" (*In re Pugsley Ave. in City of New York*, 218 NY234, 240 [1916]).

Accordingly, to "the extent that the benefit is disproportionate, that factor must receive adequate consideration in fixing the assessment" (*In re Sixth Avenue Elevated R.R.*, 265 App. Div. 200, 207; *People ex rel. Prosperity Co. v. Marvin*, 259 App. Div. 204, 205; *Church of Christ the King, Inc. v. City of Yonkers*, 115 Misc.2d 461, 463 [Supreme Court, Westchester County 1982] *cf.*, *Norwood v. Baker*, 172 US 269, 278-279 [1898]; Real Property Tax Law § 102[15]).

Preliminarily, the Court agrees that the public hearing required under the Village Law § 22-2200[2] in connection with the assessment does not constitute a "quasi-judicial" proceeding involving, *inter alia*, the cross-examination of witnesses, "trial-type hearings" and the making of a formal record typically associated with matters transferable to the Appellate Division pursuant to CPLR 7803[4], 7804[g] (*e.g.*, *Street Vendor Project v. City of New York*, 43 AD3d 345; *Halperin v. City of New Rochelle*, 24 AD3d 768, 770 *see also*, *L.S.O.F. CYNWYD, L.P. v. Town of North Hempstead*, 298 AD2d 520; *Mastroianni v. Strada*, 173 AD2d 827 *cf.*, *Scherbyn v. Wayne-Finger Lakes Bd. of Co-op.*, 77 NY2d 753, 757-758 [1991]).

Accordingly, the appropriate standard is whether the determination was "arbitrary and capricious" and supported by a rational basis (CPLR 7803[3]) (*Matter of Pell v. Board of Educ.*, 34 NY2d 222, 231; *Mastroianni v. Strada*, *supra*).

Upon applying these principles to the relevant facts, and notwithstanding the petitioners' "heavy" burden in challenging the determination (*Scarsdale Chateaux RTN v. Steyer*, *supra*, at 1044), the Court agrees that the apportioned assessment was not "just and equitable" within the meaning of Village Law § 22-2200[2] *see also*, Real Property Tax Law § 102[15]).

More particularly, the record establishes that despite the fact that neither of the subject properties adjoin or are even located in relative proximity to the lot, the Village apportioned amounts to the petitioners' parcels – the two largest assessments – by far exceed the assessments attributed to properties which are directly adjacent to the

improved lot (*cf.*, *In re Pugsley Ave. in City of New York, supra*, at 239-240). Indeed, the combined apportionment attributed to the petitioners' parcels constitutes some 36% of the total assessment (Leistman Opp. Aff., ¶¶ 35, 40).

It is significant that the assessment methodology employed by the Village – the greater of the actual or maximum permissible floor area – was applied in an essentially indiscriminate or across-the-board fashion, *i.e.*, without apparent consideration of distinguishing peculiarities and characteristics possessed by each unique property included on the assessment list.

Nor does the record support the assumption apparently underlying the use of the floor area formula; namely, that there exists some sort of rationally grounded nexus linking the relative floor area of a property to the scope of the benefit allegedly conferred, *i.e.*, the presumption that the petitioners' potential for further development will be tangibly and proportionately enhanced by increased capacity in a remotely located parking field.

There is nothing of probative import in the record or the Village's current submissions, suggesting that an apportionment based on floor area will yield an equitable and fairly proportionate result; namely, one "in proportion to the benefits" allegedly conferred (*see, In re Pugsley Ave. in City of New York, supra*, at 239-240).

Indeed, the petitioners have demonstrated, as measured by Code provisions governing off-street parking, that the properties directly adjacent to the improved lots were the most dramatically benefitted, since the pre-improvement parking capacity primarily attributable to those properties was materially deficient and nonconforming (Leistman Opp., Aff., ¶ 42; Traffic and Parking Research and Recommendations," Report [Part III], at 8) – whereas, in contrast, the lots directly adjacent to the petitioners' properties already provided relatively ample parking in light of the petitioners' existing FAR values.

Moreover, the Village has not meaningfully disputed the petitioners' assertions that their respective parcels actually contain significantly less permitted, usable floor area than the hypothetical amounts attributed to them as part of the assessment formula, and that, in fact, in order to achieve the maximum square footage figures utilized by the Village, the petitioners would require, *inter alia*, variances from certain applicable, parking requirements (Leistman [June 29] Aff., ¶¶ 4[a], 14-16, 34).

The Village's opposing claim – that the petitioners are free to construct a costly underground parking facility to exploit their properties' value and enhance permitted parking volume (Schoelle Aff., ¶ 31) – does not detract from the inequity of the apportionment method utilized; nor, in any event, does it bear any viable relation, for assessment purposes, to the purported benefits presently conferred by the improvements to lot 10 (Leistman Opp. Aff., ¶¶ 67-69).

[ 7 ]

The petitioners' assertions relative to the apportionment are also buttressed in part by the previously cited Code parking provisions, which, *inter alia*,: (1) link parking requirements to floor area; and (2) further, provide that off-street parking within a 300 foot radius of a "C-B" commercial property may be counted against a parcel's Code-mandated parking requirements (BZO §§ 200.62[C][1]; 200-62.1). Accordingly, the Village's own Code analogously supports the assertion that municipal parking situated outside the stipulated, 300 radius may be viewed as far less beneficially located, since it may not be counted in satisfaction of a property's off-street parking obligations. It also bears noting that several properties included within the assessment are apparently situated within the Code-referenced, 300 foot radius area and would be legally benefitted to an extent and degree exceeding any alleged spill over impact enjoyed by the petitioners (Leistman Aff., Exh., "L").

Nor does the 1997 Business Coalition Report cited earlier support the claim that the apportionment methodology utilized was fair and equitable.

While the Report certainly refers to the materially deficient capacity of Lot 10 – and recommends its improvement – it similarly emphasizes: (1) the localized impact of that deficiency upon the specific block where lot 10 is situated; and (2) the correspondingly localized benefits which would be conferred by the improvements, *i.e.*, it suggests that the improvements would favor and principally benefit those commercial establishments situated in close proximity to lot 10. It is notable that the Report discounts, in part, the ameliorative impact of remotely situated lots which possess greater parking capacity, based upon their inconvenient distance from the lot 10 area (Report at 8, 15).

The Village's additional claim that it has always utilized the same floor area apportionment methodology – or that it has consistently included remotely situated parcels in prior parking lot assessment lists – is not a substantive or analytical contention and adds nothing of probative import to the dispute before the Court (Schoelle Aff., ¶¶ 23-24 *see also*, Schoelle Exh., "J").

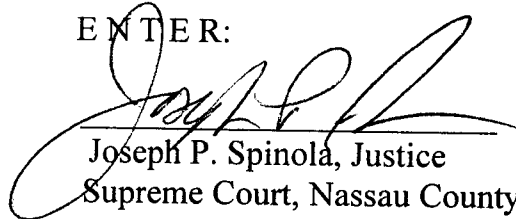
The Village further asserts that the petitioners have effectively conceded that they were benefitted by the improvements made (*see*, Schoelle Aff., ¶¶ 14-18; Leistman [June 29] Aff., ¶¶ 80, 85). Assuming, however, that the petitioners did benefit in some indirect fashion by virtue of an amorphously identified "spill over" effect (Schoelle Aff., ¶ 21) – it does not follow that the resulting assessments were equitably apportioned in proper relation to the benefits actually conferred.

In short, the Court agrees that the methodology adopted by the Village in this matter – by which taxes are primarily apportioned through reference to the parcel floor area – inequitably imposes a disproportionately enhanced share of the total assessment upon larger properties based on size alone, without due and proper regard to the actual benefit conferred by the improvements at issue (*In re Pugsley Ave. in City of New York, supra see, Norwood v. Baker, supra*).

[\* 8 ]  
The Court has considered the respondents' remaining contentions and concludes that none is sufficient to sustain the challenged assessments.

This constitutes the decision and Order of the Court.

ENTER:



Joseph P. Spinola, Justice  
Supreme Court, Nassau County

Dated: February 11, 2008  
Mineola, NY

**ENTERED**  
FEB 20 2008  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE